

MEMORANDUM

Office of the City Council



To: Honorable Mayor and City Council
From: Armando Gomez, Councilmember *AG*
Subject: Protocol for Access to Meetings and Disclosure of Public Records
Date: March 9, 2004

RECOMMENDATION:

Adopt a Statement of Policy and General Rules to guide the City Attorney in the development of protocol for access to meetings and disclosure of public records that is consistent with the following Statement of Policy and General Rules:

Statement of Policy

The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

The City of Milpitas exists to aid in the conduct of the people's business. Council actions shall be taken openly and Council deliberations shall be conducted openly. The people of this City do not yield their sovereignty to the Council which serves them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is good for them to not know. The people insist on remaining informed so that they may retain control over the instruments created. (see the Brown Act)

General Rules

Access to Meetings

Notices of meetings and agendas shall be mailed to individuals at the request of the individual. All requests must be renewed quarterly.

Policy bodies shall include council, standing subcommittees, and commissions.

Entities that receive funds from the City and whose governing body includes an appointed councilmember as a full voting member shall be subject to requirements of the Brown Act and Public Records Act.

In addition to the brief general description of items to be discussed or acted upon in open and public session, the permissive provisions of Government Code Section 54954.5 are mandatory with respect to closed sessions.

All closed sessions of any policy body covered by the policy shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least ten years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this policy, wherein the justification for the closed is due to "anticipated litigation" shall be released to the public in accordance with the following provisions: Two years after the meeting if no litigation is filed; Upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

Each policy body shall audio record each regular and special meeting. Each such audio recording, and any audio and video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act. Inspection of any such recordings shall be provided without charge on an appropriate play back device made available by the City.

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items that are not on the agenda. Meetings at which an item is discussed shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action. Time limits shall be applied uniformly to members of the public wishing to testify.

The clerk or secretary of each policy body shall record the minutes for each regular and special meeting of the policy body. The draft minutes shall be available for inspection and copying no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted.

Access to Public Records

A record should not be withheld from disclosure unless expressly exempt under the Public Records Act or another statute and that any withholding should be justified in writing with a brief explanation for the withholding. Additionally a record should not be withheld unless all the information in the record is exempt. Information, which is exempt from disclosure, should be redacted in order that the nonexempt portion of the record may be released.

Records such as drafts should be retained in accordance with any adopted document and

retention policy and practice. Preliminary drafts of documents kept in the ordinary course of business, including drafts of agreements, which are kept and preserved after final action has been taken, shall be disclosed upon request.

Unless privileged under state law, when litigation is finally adjudicated or otherwise settled, records of all communications between the City and the adverse party should be subject to disclosure. Disclosure would extend to the text and terms of the settlement.

Records of contractor's bids are available for inspection, immediately following the closing of bids. Responses to RFP's are available for inspection after staff has reviewed and forwarded its recommendation to Council. When a firm is awarded a contract, information, which was submitted to the City during the bid, is subject to disclosure unless otherwise exempt. Such disclosure would not apply to records that are otherwise privileged under state or federal law.

Budgetary information including bills or records of payments, which are submitted to the City Council, should be subject to disclosure unless the record is confidential or privileged under state or federal law.

Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 30 days after negotiations end.

The Mayor, Council and City Manager shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official related to City business. This excludes purely personal and social events at which no city business is discussed. The calendar shall include a general statement of issues discussed. Such calendars shall be public records and be available to any requester.

The Mayor, Council and City Manager shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, emails, drafts memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this policy.

Included in the policy will be guidelines as to the number of days permitted for disclosure of all types of records. To monitor timeliness of responses to public records inquiries, Council shall receive regular quarterly reports on all requests for public information. Reports will contain type of request, date request made, date when records released, explanations for releasing or withholding information, and explanations for any delays in requests. Such reports will not identify requestor of information or any other information confidential by law.

The City of Milpitas shall preserve a public records index that identifies the types of information and documents maintained by the City departments, agencies, commissions, and elected officers. The index shall be organized to permit a general understanding of the types of information maintained.

BACKGROUND:

The public's rights of access to information held by local agencies and access to meetings are defined by the California Public Records Act and the Brown Act. The Public Records Act declares that all records held by state and local agencies are public, but specifies some exceptions to the rule. The Brown Act enables minimum standards for citizen oversight of government. Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records and meetings than prescribed by the minimum standards set forth in the Public Records Act and the Brown Act. Other local governments in California have adopted "Sunshine Ordinances" to allow for greater public access. Milpitas should have greater access also. The protocol proposed should be developed so that it reflects a strong commitment to the philosophy of open government and gives the people wide access to public records and meetings, well beyond the minimum standards set by state law.

The people of this City shall have greater access to meetings and to City records than prescribed by the minimum standards of the Brown Act and the Public Records Act. The City should go beyond compliance to a broader presumption: Everything should be public unless it's required by law to stay private or some clearly harmful result will outweigh the benefit of public disclosure.

Public trust in government is at a low ebb, and nothing feeds distrust more than secrecy. A standard for openness would help maintain a foundation for trust in Milpitas government.